

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.244 OF 1998

DIPAKBHAI VINAYAK DESAI

VERSUS

DHARAMPUR NAGARPALIKA BUREAU

Appearance:

MR KS ACHARYA for the Petitioner

CORAM: MR.JUSTICE S.K.KESHOTE

Date of Order: 03/02/1998

C.A.V. ORDER

Heard the learned counsel for the petitioner.

2. The petitioner has come up with the case that he was serving as a daily wager Peon in the octroi department of the respondent. Under the order No.796 of 1994 dated 15th August 1994, submitted as Annexure 'A' to this Special Civil Application, the petitioner was given appointment on temporary basis as Naka Patavala. The date 15th August 1994 given of this order is incorrect for the reasons that 15th August is normally declared as a national holiday and in the xerox copy of the order the date has been mentioned as 15th October 1994. The grievance of the petitioner is that his salary has been reduced from regular pay scale to daily wages from September 1995 and this reduction has been done without complying the provisions as contained in section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred as as the 'Act 1947'). The petitioner prayed for relief in this Special Civil Application to declare the oral order of the respondent in reducing the wages of the petitioner from 1995 till this date as illegal, unjust, unconstitutional. Further prayer has been made that the action of the respondent in reducing the wages without complying to Section 9-A of the Act 1947 is also illegal, unjust and unconstitutional and should be quashed and set aside and the petitioner should be given the wages as was given from November 1994 with all arrears.

3. The petitioner has not stated in the Special Civil

Application, nor it seems to be the case of petitioner that prior to 15th October 1994, he was working in the office of respondent as a daily wager. So the petitioner's entry in the respondent's office is under the order dated 15th October 1994, under which he was given temporary appointment. The learned counsel for the petitioner, on being asked by the Court, has admitted that this appointment of the petitioner on temporary basis under the order annexure 'A' has been made without any selection. The petitioner's temporary appointment as Patavala was brought to an end from September 1995 and instead of terminating his services, he was retained in services on daily wages. So the petitioner has been shown favour at both the ends, while making appointment on temporary basis under the order dated 15th October 1994 and thereafter while continuing him on daily wages from September 1995. The petitioner has not made any grievance to the action of the respondent to bring end to his temporary services as Patavala and to continue him as daily wager for all the time till 30th December 1997. So the action of reduction of salary of the petitioner, what the petitioner contends to have been made by respondent, has been challenged after more than two years and this challenge to that order suffers from delay and laches. The petitioner has accepted that condition. Further The petitioner has also accepted discontinuation of his appointment on temporary basis and now after two years, he is estopped from challenging that oral order continuing him on daily wages. Otherwise also, the temporary appointment does not confer any right upon the petitioner to continue on the post and such appointment is liable to be terminated at any time. A contention has been raised that this action is illegal as it has been taken without complying with the provisions of Section 9-A of the Act, 1947, but it is suffice to say that this contention is also not available to the petitioner, particularly in case where the very entry of the petitioner was on the basis of order of temporary appointment which has been made in contravention of provisions of Articles 14 & 16 of the Constitution of India. Even the general rule of appointments to public service lays down that such appointments should be on merits and through open invitation and it is normal route through which one can get into public employment. It is not the case of petitioner that the respondent has not laid down rules for recruitment to the post of Patavala. Even if it is taken that there are no rules prescribed or laid down by respondent for making recruitment to the post of Patavala, then too, all such appointments should have been made on merits and through open invitation. It is a settled law that the provisions of Articles 14 & 16

of the Constitution of India are attracted in the cases of temporary appointments also. So the very appointment of the petitioner on which the whole case has been made in this Special Civil application is ab-initio void as it has been made in violation of provisions of Articles 14 & 16 of the Constitution of India. In view of this fact, even if it is taken that the respondent while changing the status of the petitioner, as what the petitioner contended in the Special Civil Application, has not complied with the provisions of Section 9-A of the Act 1947, it will be of no consequence. In case on this count if the relief is granted to the petitioner, then this Court will restore the appointment of the petitioner which has been made dehors the provisions of Articles 14 & 16 of the Constitution of India.

4. Taking into consideration the totality of the facts of this case, this writ petition is wholly misconceived and the same is dismissed summarily.

(S.K.Keshote, J)

(sunil)